

Role of USACE in Maintaining Navigable Waterways

History & Responsibilities:

- The Corps has been involved in maintaining navigation for interstate and international commerce since the early 1800s.
- The Corps is responsible for constructing and maintaining federal navigation channels and projects that are authorized by Congress following studies to determine that there is...
 - A federal interest (looking at national rather than local benefits) in the project and
 - The costs are justified (cost to benefit ratio for construction and continued commercial use or life safety needs to support maintenance).
- Projects can include...
 - Navigation channels with established (authorized) depths and width,
 - Jetties or other structures to help maintain the channels,
 - Navigation locks and other infrastructure.

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Roles & Authorities:

The Corps also plays a significant role in protecting and maintaining the general availability of waterways for public navigation, including waters of the United States that is broader than the congressionally authorized navigation channels under a regulatory program.

Key laws include...

- **Section 10 of the River and Harbors Act of 1899** under which permits from the Corps are required for structures or activities in or that affect navigable water of the US;
- **Section 404 of the Clean Water Act** under which the Corps is responsible for permits for the discharge of dredged or fill material into waters of the US; and
- **Section 103 of the Marine Protection Research and Sanctuaries Act** under which the Corps issues permits for the transport of dredged material for placement in Ocean Dredged Material Disposal Sites.

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USACE Engineering Pamphlet (EP) 1165-2-1 states:

“The Navigation Servitude. This sovereign power allows the Government to use lands under navigable waters for navigation related purposes without payment under the Fifth Amendment. The power includes the right to remove any structures within the servitude. The navigation servitude is derived from rights recognized under Roman civil law and English common law for the public to use navigable waterways without payment, despite the private ownership of the bed or bank. The navigation servitude was incorporated into United States law as part of the Commerce Power under the U.S. Constitution. Hence, in exercise of Congress' power over navigation stemming from the Commerce clause of the Constitution, no further Federal real estate interest is required for navigation projects in navigable waters below the ordinary high water mark. Further, the courts have also generally held that, under the navigation servitude, claims of consequential damages arising from Federal development for navigation, with respect to property values or otherwise, are not compensable. . . .”

The use of navigation servitude requires some sort of federally authorized project.

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The Corps does have authority to regulate obstructions to navigation under Section 10 of the Rivers and Harbors act of 1899 (33 USC 403), such as the ferry terminal constructed in navigable waters. As with navigation servitude, the Corps' authority to regulate obstructions to navigation stems from the commerce clause of the constitution. Those obstructions can be manmade or naturally occurring including derelict vessels.

- a. The **owner, operator, or lessee of a vessel has the first right of removal**. USACE cannot “take” someone’s private property without first approaching the owner, legally seeking his or her cooperation with what USACE (in consultation with USCG) has determined is needed to mitigate the navigational hazard.
- b. Even following a **Presidential Disaster Declaration**, USACE is expected to remove debris within the Federal channel limits along Federally-maintained waterways, using its existing project or Rivers and Harbors Act of 1899 authorities and applying ER and EP 1130-2-520, Chapter 4 policies.
- c. **USACE supports USCG** when there is an oil or hazardous substance pollution event in the navigable waters of the U.S. – either at USCG’s direct request or under ESF 10 – Oil and Hazardous Materials Response after a Presidential Disaster Declaration is made.

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For more information, contact:

John A. Hicks

Chief, Navigation Section

Army Corps of Engineers, Seattle District

4735 E. Marginal Way S

Seattle, WA 98124-2255

(206) 764-6908- Telephone

(206) 595-2750- Cell

(206) 764-3308- Fax

john.a.hicks@usace.army.mil